REMARKS

This Amendment is being filed in response to the Office Action dated June 14, 2004. Reconsideration and allowance of the application in view of the amendment made above and the remarks to follow are respectfully requested.

Claims 1-18 are pending in this application. Claims 1, 16, and 18 are independent claims. The Applicants would like to thank the Examiner for the indication that Claims 16 and 17 are allowed.

In the Office Action, Claims 1-15, 18, and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,348,928 to Jeong ("Jeong") in view of U.S. Patent No 6,176,782 to Lyons ("Lyons").

These rejections are respectfully traversed for the reasons stated herein as well as for the reasons previously stated in the prior amendments. It is respectfully submitted that a position is taken in the Office Actions that is not supported by the references nor by the case law related to an obviousness rejection.

The points of these rejections have been previously addressed and discussed in great detail previously, although the Examiner has simply maintained the position first stated in the first Office Action of August 28, 2003. In the interest of preparing the record for subsequent appeal, should it become necessary, the Applicants would like to make clear that each of the previously stated

arguments are maintained herein as if set out in its entirety. Accordingly, the Applicants do not concede the prior arguments and wish the Examiner to consider the prior arguments as well as the recasting of those arguments herein.

As a first point, it is respectfully submitted that there is no teaching in the prior art or proper suggestions identified in the Office Action for the combination of Jeong and Lyons. This argument has been set out previously and it is respectfully requested that those arguments be reviewed for the Examiner's further consideration. In addition, the suggestion in the Office Action that the combination of Jeong and Lyons "would be obvious to one of ordinary skill in the art ... because a vision system can function in some environments where the use of a heat sensing system would be unusable" is respectfully refuted. One may not utilize the teachings of the present application as a road map to pick and choose amongst unrelated prior art references for the purposes of attempting to arrive at the presently disclosed invention. The Federal Circuit has identified three possible sources for motivation to combine references including the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. (See, In re Rouffet, U. S. Court of Appeals Federal Circuit, U.S.P.Q. 2d, 1453, 1458.)

There must be a specific principle that would motivate a skilled artisan, with no knowledge of the present invention, to combine Jeong and Lyons. The use of hindsight in the selection of references is forbidden in comprising the case of obviousness. Lacking a motivation to combine references, a proper case of obviousness is not shown (see, In re Rouffet, 1458).

Yet, the Office Actions identifies a problem not recognized in either reference, and utilizes one solution, of potentially many even if this problem were recognized, as the motivation for combining unrelated references Jeong and Lyons. Let it be stated herein that it is the Applicants' position that this problem is not shown or suggested by the references.

Further, given a supposition that this problem is identifiable somewhere in these prior art references, which it is not anywhere within the four corners of the references, there are innumerable ways to solve this problem. Yet, the Office Action somehow from thin air, utilizes Lyons to provide missing components of Jeong, which even in combination, it does not.

In review, Jeong is cited for showing a video display that is adjusted in response to sensing a thermal temperature of person and rotating the video display to face the person. Lyons is cited for teaching a vision recognition system. However, the vision system in Lyons merely determines a pose of the user and a position of the

users hand for identifying what a user is pointing at on a display screen.

How can it be said that these prior art references are related? It is clear from the face of each of the references that each is identified in a different US and international class. Even the classes searched in examining the prior art references do not overlap in any meaningful way. It is respectfully submitted that these references are unrelated and not properly combinable for this additional reason. A person skilled in the art would have no motivation for seeking out Lyons when presented with the teachings of Jeong. The only possible reason is if one where presented with the present patent application as a roadmap to search amongst unrelated prior art for the sole purpose of identifying elements missing in Jeong, and thereby identify a further reference that utilizes computer vision in a completely different system for a completely different purpose. Yet this type of piecing together is strictly forbidden as discussed above and further discussed in prior amendments.

Even the MPEP has identified this potential problem and the Examiner's attention is requested to MPEP 2143, wherein it is stated:

> "THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION … The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)." And, "FACT THAT REFERENCES CAN BE COMBINED OR

> MODIFIED IS NOT SUFFICIENT TO ESTABLISH PRIMA FACIE OBVIOUSNESS … The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)…. Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d at 682, 16 USPQ2d at 1432.)."

Further, even if these references where somehow combinable, Jeong in view of Lyons does not disclose or suggest "the system comprising at least one image capturing device trainable on a viewing region of the display screen and coupled to a control unit having image recognition software that identifies the user in an image generated by the image capturing device, the software of the control unit also generating at least one measurement of the position of the user relative to the viewing region based upon the detection of the user in the image" as required by Claim 1. Jeong in view of Lyons also does not disclose or suggest "system comprising at least one image capturing device trainable on a viewing region of the display screen and coupled to a control unit having image recognition software that identifies one or more gestures of the user in an image generated by the image capturing device, the control unit invoking an adjustment of the orientation of the display screen based upon the identified gesture of the user in the image" as required by Claim 13. The Office Action does not even attempt to identify motivation for providing gesture recognition in the infrared (heat) detecting system of Jeong. As

would be readily apparent to a person of ordinary skill in the art, gesture recognition is not even possible in the system of Jeong without a complete replacement of the crude detection system taught by Jeong. In this way, Jeong is much likened to the crude photo detector system discussed in the present patent application, specifically U.S. Patent No. 5,250,888 to Yu (see, the present patent application, page 1, last paragraph continuing onto page 2) and thereby, shares the same identified flaw of only providing "an approximation of the location of the viewer ..." and certainly is incapable of gesture recognition. Further still, Jeong in view of Lyons does not disclose or suggest "a control device coupled to the video capture device, the control device comprising a viewer detection portion configured to detect a viewer in the viewing region, the control device configured to invoke an adjustment of an orientation of the display screen based upon an orientation of the viewer within the viewing region" as required by Claim 18.

Accordingly, it is respectfully submitted that Claims 1, 13, and 18 are allowable over Jeong in view of Lyons and an indication to that effect is respectfully requested. Claims 2-12 and 19 depend from one of Claims 1, 13, and 18 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained therein.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Early and favorable action is earnestly solicited.

Respectfully submitted,

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CERTIFICATE OF MAILING

It is hereby certified that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to:

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On September 14, 2004

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